

# HOUSE . . . . . No. 2405

By Mr. Petruccelli of Boston, petition of Thomas M. Menino and others relative to permitting cities and towns to impose an excise tax on the use of off-street parking facilities. Revenue.

## The Commonwealth of Massachusetts

### PETITION OF:

Thomas M. Menino  
Martin J. Walsh

Elizabeth A. Malia

In the Year Two Thousand and Five.

AN ACT RELATIVE TO PERMITTING CITIES AND TOWNS TO IMPOSE AN  
EXCISE ON THE USE OF OFF-STREET PARKING FACILITIES.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 The General Laws are hereby amended by inserting the  
2 following new chapter:

### 3 CHAPTER 64L 4 EXCISE UPON TRANSFER OF PARKING SPACES

5 Section 1. As used in this chapter, the following words, unless  
6 the context otherwise indicates, shall have the following mean-  
7 ings:—

8 “Motor vehicles”, as defined in section one of chapter ninety of  
9 the General Laws.

10 “Nonresidential”, any parking facility as defined herein other  
11 than (a) one provided or leased to occupants of a residence on the  
12 same or other premises for use only in connection with and as an  
13 accessory to the occupancy of such residence, or (b) one operated  
14 exclusively by an owner or lessee of a hotel, motel, or lodging  
15 house, as defined in chapter 64G, or a trailer park, to the extent  
16 that the parking facility is provided to guests or tenants of such

17 hotel, motel, lodging house or trailer park for no additional con-  
18 sideration.

19 “Operator”, any person operating an off-street, unmetered  
20 parking facility, including, but not limited to, the owner or propri-  
21 etor of such premises, lessee, sub-lessee, mortgagee in possession,  
22 licensee or any other person otherwise operating such parking  
23 facility, and including the commonwealth and political subdivi-  
24 sions, agencies and authorities thereof, except as otherwise pro-  
25 vided by law.

26 “Parking facility”, any premises utilized in whole or in part for  
27 the provision of nonresidential, unmetered, off-street parking for  
28 motor vehicles, whether in a building or not, including, but not  
29 limited to, facilities open to the public for a fee and facilities pro-  
30 vided by an employer for use by customers, employee or  
31 licensees.

32 “Parking fee”, the consideration received or charged upon an  
33 express or implied contract or under a lease or otherwise, whether  
34 or not separately stated, provided or allowed by the person on  
35 whose behalf the motor vehicle is parked or stored or by some  
36 other person.

37 “Parking space”, that portion of a parking facility normally  
38 allocated to the use of a single motor vehicle.

39 “Person”, an individual, partnership, trust or association joint  
40 stock company, corporation, whether charitable or otherwise,  
41 society, club, organization, institution, estate receiver, trustee,  
42 assignee or referee and any person acting in a fiduciary or repre-  
43 sentative capacity, whether appointed by a court or otherwise, or  
44 any combination of individuals acting as a unit.

45 “Transfer of the right to use”, that transfer of right which  
46 occurs whenever a motor vehicle enters a parking facility for con-  
47 sideration.

48 “Treasurer”, the treasurer of a city or town which accepts the  
49 provisions of this act.

50 Section 2. The provisions of this act shall not be construed to  
51 include parking facilities operated by the United States or an  
52 instrumentality thereof.

53 Section 3. Any city or town which accepts the provisions of this  
54 Act, as hereinafter provided, may impose an excise on the transfer  
55 of the right to use any space in a parking facility for the purpose

56 of parking a motor vehicle by any operator at a rate of 10% of the  
57 parking fee for each transfer of the right to use such space.

58 Section 4. Reimbursement for an excise imposed under this Act  
59 shall be paid by the person using such space to the operator and  
60 each operator shall collect from the person using such space the  
61 full amount of the excise imposed by this Act.

62 Section 5. The amount of the excise collected by the operator  
63 from the person using such parking space under the provisions of  
64 this Act shall be stated and charged separately from the parking  
65 fee at the time that any transfer of the right to use such parking  
66 space is made, or any evidence of such transfer is issued or used  
67 by the operator.

68 Section 6. On or before the twentieth day of each calendar  
69 month, every operator who has made any transfer of the right to  
70 use any parking space on which an excise is payable under the  
71 provisions of this Act during the preceding calendar month shall  
72 file a sworn return with the treasurer, in such form as the treasurer  
73 shall prescribe, giving such information as the treasurer shall  
74 require for the determinate of the excise imposed by this act. Said  
75 excise shall be due and payable on or before the due date of the  
76 return.

77 Section 7. Every operator shall keep and preserve suitable  
78 records of the number of such transfers of the right to use such  
79 parking spaces and such other books and accounts as the treasurer  
80 may require to determine the amount of the excise due under this  
81 act.

82 Section 8. Any operator who knowingly fails to file a return as  
83 provided in section six, or who knowingly files a fraudulent  
84 return, shall be subject to a fine of five hundred dollars for each  
85 such failure or fraudulent return. If any recipient fails to file a  
86 return on or before its due date, the city or town may suspend or  
87 revoke any license or permit issued to the recipient by the city or  
88 town allowing the recipient the right or privilege to operate an off-  
89 street parking facility, as defined in this chapter, in that city or  
90 town. Notice of suspension or revocation shall be deemed suffi-  
91 cient if sent by certified mail to the last known place of residence  
92 or business of said recipient. Notice of suspension or revocation  
93 shall be accompanied by a statement which provides that the  
94 recipient may obtain a hearing upon his written request. The

95 request must be filed with the city or town before the expiration of  
96 the twenty-first day from the date of issuance at said notification  
97 of suspension or revocation.

98 If a recipient charged with failing to file a return on or before  
99 its due date requests a hearing before the expiration of the twenty-  
100 first day from the date of issuance of said notification of suspen-  
101 sion or revocation, the city or town shall forthwith schedule the  
102 matter before a person referred to as a hearing officer, said  
103 hearing officer to be such person as the treasurer may designate.  
104 Written notice of the date, time and place of said hearing shall be  
105 sent by certified mail to the recipient. Said hearing shall be  
106 informal and the rules of evidence shall not apply. The hearing  
107 officer shall keep a record of the hearing and the decision of the  
108 hearing officer, which shall be in writing, shall be final subject to  
109 judicial review as provided by section fourteen of chapter thirty A  
110 of the General Laws. Sums due a city or town under the provi-  
111 sions of this chapter may be recovered by such city or town in an  
112 action brought in the name of the treasurer.

113 Section 9. This act shall take effect in a city or town on the first  
114 day of the first full month not less than thirty days following its  
115 acceptance in the following manner: in a city having a plan D or  
116 plan E charter by a majority vote of the city council; in any other  
117 city by vote of its city council, approved by the mayor; and in a  
118 town by submission for acceptance to the registered voters in the  
119 form of the following question which shall be printed upon the  
120 official ballot to be used at election:— “Shall the town impose an  
121 excise on the use of certain parking facilities within the town?”

122 Section 10. Any Municipality that so adopts this chapter may  
123 also by vote of the board of selectmen or mayor and city council,  
124 or by the declaration of a state of emergency by the board of  
125 selectmen, town manager or mayor, temporarily suspend the col-  
126 lection of this excise during the course of weather emergencies or  
127 other public safety or traffic related emergencies or events that  
128 may require the clearing of public ways for the public good upon  
129 reasonable public notification of such an emergency or event and  
130 shall refund any amount collected in error upon proof of that error  
131 made to the treasurer.